

Order 96-3-34

Issued by the Department of Transportation

UNDOCKETED

ORDER

SUMMARY

Aviateca, S.A., Lineas Aereas Costarricenses, S.A. (LACSA) and TACA International Airlines, S.A, (the joint applicants) have requested code-share authority in various U.S. markets. By this order, we: (1) grant the requests, in part, in order for the joint applicants to conduct code-share operations on scheduled flights conducted by LACSA and/or TACA in Department-authorized U.S. markets; (2) dismiss the requests to the extent that code sharing would be conducted on flights operated by Aviateca; and (3) deny the requests to the extent not granted.

BACKGROUND

The joint applicants have requested comprehensive code-share operations between Central America and the United States. ¹

¹ Aviateca (a flag carrier of Guatemala), LACSA (a flag carrier of Costa Rica) and TACA (a flag carrier of El Salvador) hold Department authorities to conduct scheduled operations between their homelands and various U.S. cities, via various Central American intermediate points, and to conduct charters. All of TACA's U.S. route authorities, and the majority of LACSA's U.S. route authorities, permit those carriers to serve Guatemala City as an intermediate point. The carriers filed their joint application on October 7, 1994.

Under their proposal, each applicant carrier proposes to carry traffic of the other two applicants, on a code-share basis, over existing, currently-authorized scheduled routes, and over any new routes that any of the applicants may be authorized to serve by the Department in the future. Additionally, the applicants request comprehensive, Fifth Freedom charter authority to conduct wet-lease service for the two other applicants, in those markets where the operator of the flight does not hold Department authority to conduct scheduled operations.

United Air Lines, Inc., answered the application, stating that while it had no specific objection to the code-share operations as proposed, it questioned whether comity and reciprocity supported grant of the request. United urged that any Department approval be conditioned on reciprocity by the applicants' homelands with respect to similar code-share requests of U.S. carriers. Alternatively, United urged the Department to request statements of each carrier's homeland's policy regarding code sharing.

The joint applicants replied that comity and reciprocity supported grant of the request and that United has never requested code-share authorization from their homelands.

Subsequent to this initial round of pleadings, the joint applicants presented further submissions in which they offered variations on their initial request.

First, in responding to the Department's letter of November 18, 1994, which requested clarification of certain facets of the proposal, the joint applicants requested immediate code-share authority on their operations between Central America and already-authorized California points.

Then, Aviateca and TACA requested a separate Statement of Authorization to engage in code sharing on either carrier's existing flights to Houston, Texas. United answered this request urging the Department to defer action until the joint applicants' homelands enter into code-share agreements with the United States guaranteeing reciprocal approvals. The joint applicants filed a reply to United.

Finally, on December 21, 1995, Aviateca filed a pleading stating that, while it continued to prefer approval of all the authority sought in its prior pending applications, it would, in light of Guatemala's current Category 2 status under the Federal Aviation Administration's (FAA) safety oversight review, accept more limited authority. Specifically, Aviateca would accept a grant limited such that: (1) Aviateca would not increase the number of frequencies it currently operates in U.S. markets in order to

conduct code-share service carrying TACA/LACSA traffic, and (2) Aviateca would place its code-share traffic on flights operated by TACA/LACSA (but those carriers would not place their code-share traffic on flights operated by Aviateca).² In support, Aviateca stated that code sharing on TACA/LACSA flights is consistent with the Department's stated policy on "Category 2" carriers' requests for expanded economic authorities, and that grant of its request would allow it to utilize its fleet more efficiently.

We received no answers to Aviateca's December 21, 1995, request.

INTERGOVERNMENTAL COMMUNICATIONS AND INITIAL ACTION

In order to make the necessary determination on the state of reciprocity on the part of the three foreign governments involved, we contacted the Governments of Costa Rica, El Salvador and Guatemala regarding their code-share policies and have received responses supporting the conclusion that each government would approve similar code-share requests involving U.S. carriers. On that basis, on November 30, 1995, we granted statements of authorization to LACSA and TACA to conduct code-share operations with one another, under their existing Department authorities to conduct scheduled combination operations between their homelands and Los Angeles/San Francisco/New York.³

² Under the safety oversight program, the FAA has defined a "Category 1" country as one whose civil aviation authority licenses and oversees air carriers in accordance with the International Civil Aviation Organization's (ICAO) aviation standards and a "Category 2" country as one whose civil aviation authority has areas of noncompliance with ICAO aviation safety standards. However, the FAA negotiates actively with the civil aviation authorities of "Category 2" countries to implement corrective measures. During these negotiations, the Department permits flights under existing authority to operate to the United States and the FAA conducts heightened surveillance. Costa Rica and El Salvador were classified by the FAA as "Category 1" countries in August 1994 and July 1995, respectively; Guatemala was classified as a "Category 2" country in August 1994. No new or expanded operations will be permitted "Category 2" country carriers (unless operated using aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier) until the home country's civil aviation authority is reclassified by the FAA as "Category 1". See 60 FR 55408, October 31, 1995.

³ LACSA holds Department authority to conduct operations to Los Angeles/San Francisco via various intermediate points, including San Salvador, El Salvador, and Guatemala City, Guatemala, and to

DECISION

We are now granting further authority for LACSA and TACA to: (1) conduct code-share operations on behalf of Aviateca in those U.S. markets in which Aviateca and the operator of the flight hold current Department authority to conduct scheduled operations; and (2) conduct code-share operations in those U.S. markets in which both carriers currently hold Department authority to conduct scheduled flights.

Additionally, we: (1) dismiss without prejudice the pending requests to the extent that code sharing would be conducted on flights operated by Aviateca; and (2) deny the requests to the extent not acted on above. We are making our grant of authority subject to our usual conditions regarding the holding out of code-share operations.

We find that our action is in the public interest. Specifically, we find that the authority we are granting is supported by reciprocity on the part of the joint applicants' homelands, given the above-described information we received from these governments.

In this connection, however, we emphasize that we grant this authority in full reliance on our expectation that the Governments of Guatemala, El Salvador and Costa Rica will approve U.S.-carrier requests to implement similar code-share operations to those countries involving third-country carriers. Should such approval not be forthcoming, we reserve the right to review and to amend, modify or revoke this authority at any time and without hearing. The joint applicants should have no expectations that the code-share authorities granted here would continue in such circumstances.

It is not our policy to grant code-sharing authority on routes where applicants are not currently authorized to serve. Therefore, we will deny the joint applicants' requests to extend the code-share authorities granted above to future U.S. route authorities. Should the applicants wish an expansion of their code-share authority, they will need to apply for it separately following our grant of the relevant underlying route authority. Further, we will deny the request for comprehensive, Fifth Freedom charter authorities as being beyond the scope of authority we are prepared to grant to foreign air carriers. Finally, we will dismiss without prejudice the request to the

serve New York via Guatemala City; TACA's Department authority permits it to serve those three U.S. points via Guatemala City.

extent that it requests authority for Aviateca to carry LACSA and/or TACA traffic on its flights.

In view of the above, and acting under authority assigned by the Department in its regulations, 14 CFR Part 385, we find that grant of this authority is consistent with the public interest and that our action here does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Lineas Aereas Costarricenses, S.A. (LACSA) and TACA International Airlines, S.A. (TACA) statements of authorization under 14 CFR Part 212 to: (1) conduct code-share operations on behalf of Aviateca, S.A., in those U.S. markets in which Aviateca and the operator of the flight currently hold Department authority to conduct scheduled foreign air transportation of persons, property and mail; and (2) conduct code-share operations on behalf of each other in those U.S. markets in which both carriers currently hold Department authority to conduct scheduled foreign air transportation of persons, property and mail;

2. We dismiss without prejudice the pending requests to the extent that code-sharing would be conducted on flights operated by Aviateca;

3. To the extent not acted on above, we deny the requests;

4. The authorities granted in ordering paragraph 1, above, are effective immediately for one year from the service date of this order;

5. The subject foreign air transportation authorized in ordering paragraph 1, above, shall be sold in the name of the carrier holding out such service in computer reservations systems and elsewhere, and the carrier selling such transportation shall accept all obligations established in its contract of carriage with the passenger (i.e., the ticket.) Further, the joint applicants must comply with the rules for airline designator code sharing set forth in 14 CFR 399.88;

6. We may amend, modify or revoke the authorities granted in ordering paragraph 1, above, at any time and without hearing; and

7. We will serve a copy of this order on Aviateca, LACSA, TACA, United, the Ambassadors of Costa Rica, El Salvador and Guatemala in Washington, D.C., the Department of State (Office of Aviation) and the Federal Aviation Administration (AFS-200.)

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of this order. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

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Wide Web at
<http://www.dot.gov./dotinfo/general/orders/aviation.html>*